

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

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|------------------------------------|---|--------------------------------|
| RONALD JAMES BAKER | : | CIVIL ACTION NO. 3:13-CV-00652 |
| Petitioner | : | (Judge Caputo) |
| V. | : | (Magistrate Judge Schwab) |
| | : | |
| JEROME WALSH | : | |
| Respondents | : | |
| | : | |
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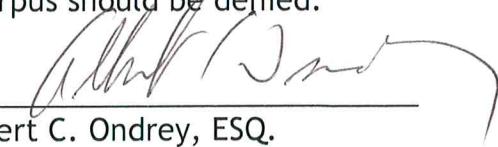
ANSWER

1. Petitioner is time barred under 28 U.S.C. § 2244(d)(1)(A), for the following reasons:
 - a.) Petitioner did file a timely direct appeal to the Pennsylvania Superior Court by Notice of Appeal dated September 16, 1997.
 - b.) The Superior Court affirmed Petitioner's sentence by Order dated March 25, 1998.
 - c.) No Petition for Allowance of Appeal to the Pennsylvania Supreme Court was filed.
 - d.) No PCRA Petition was filed.
 - e.) A Federal Habeas Petition would have to have been filed by April 30, 1999.
2. Petitioner failed to Exhaust State Remedies as no PCRA Petition was filed. Petitioner is correct in his assertion that he failed to comply with jurisdictional time limits as the PCRA Petition would have had to have been filed within one year his judgment became final, ie, 30 days after the affirmance of his judgment of sentence.
3. Petitioners claim of an illegal sentence is without merit and factually incorrect.
 - a.) Petitioner entered a plea of guilty to DUI on June 30, 1997 the same date as his pleas of guilty to Aggravated Assault by Vehicle as evidenced by the attached Order of the Court of Common Pleas of Bradford County the Honorable John T. Mott presiding. (Exhibit A).

b.) A plea of guilty is a conviction.

c.) While Petitioner did not receive a sentence for the DUI, that was due to the merger with the Aggravated Assault by vehicle. See Commonwealth v Schmohl, 975 A. 2d 1144 (Pa. Super 2009).

WHEREFORE, Petitioner's Petition for Federal Habeas Corpus should be denied.

BY: 

Albert C. Ondrey, ESQ.

ID# PA 36926

Counsel for Respondent

District Attorney's Office

Bradford County Courthouse

301 Main St., Towanda, PA 18848

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Petitioner : (Judge Caputo)
V. : (Magistrate Judge Schwab)
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MEMORANDUM
PROCEDURAL HISTORY

Petitioner was charged by Criminal Complaint with three (3) counts of Aggravated Assault by Vehicle while Driving Under the Influence, 75 Pa C.S. § 3735.1, DUI 75 Pa. C.S. § 3731(a)(1) and (a)(4) and related charges on October 15, 1996. The charges were held to court after a Preliminary Hearing. An Information was filed on January 3, 1997. Defendant entered pleas of guilty on June 30, 1997 to two counts of Accident Involving Death or Injury by Unlicensed Operator, Felony third degree, two counts of Aggravated Assault by Motor Vehicle while Driving under the Influence, a Felony second degree, and one count of Driving Under the Influence of Alcohol, a misdemeanor of the second degree, one count of Driving while Operating Privilege is Suspended or Revoked, second or subsequent offense, summary and two counts of Recklessly Endangering Another Person, misdemeanor second degree.

Defendant was sentenced on August 18, 1997. The court sentenced defendant to a term of incarceration of 30 months to 120 months on each count of Aggravated Assault by Vehicle While Under the Influence and 15 months to 30 months on each

count of Accident Involving Injury by Unlicensed Operator. The sentences were run consecutively for an aggregated sentence of seven and a half years to 25 years. The other convictions including the DUI were held to merge for sentencing purposes. Defendant filed a timely Notice of Appeal on September 16, 1997.

The Superior Court of Pennsylvania entered an Order affirming the judgment of sentence on March 25, 1998.

The record reflects no Petition for Allowance of Appeal to the Supreme Court of Pennsylvania was filed. No P.C.R.A. Petition was filed.

Petitioner did file proceedings relating to collection of fines and costs and an appeal of the dismissal of his Motion for Stay but said proceedings are unrelated to this Petition.

Petitioner filed this Petition for Writ of Federal Habeas Corpus on April 17, 2013.

ARGUMENT

A Petition for Federal Habeas Corpus Relief on a state judgment must be filed within one (1) year of the date the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review. 28 U.S.C. § 2244(d)(1)(A). Petitioner sought direct review of the judgment of sentence. The Superior Court of Pennsylvania affirmed the judgment of sentence on March 25, 1998. No Petition for Allowance of Appeal was filed. No PCRA Petition was filed. For

purposes of the Statute of Limitations, the judgment became final on April 24, 1999.

This petition being filed in 2013 is well beyond the statute of limitations.

Petitioner did not exhaust his state remedies and he is correct in his assertion that a PCRA would have had to have been filed by April 24, 1999.

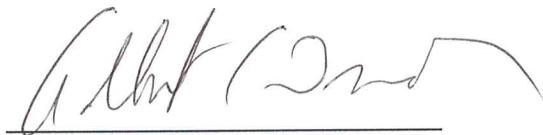
Petitioner's sole reason for being excused from filing within the required time frame is his assertion that the sentence is illegal because he was never convicted of the predicate DUI offense. This assertion is factually incorrect as Petitioner entered a plea of guilty to DUI on June 30, 1997. A plea of guilty is a conviction. Petitioner did not receive a separate sentence for the DUI offense because it merged with the Aggravated Assault by Vehicle While Driving Under the Influence. Commonwealth v. Schmohl 975 A. 2d 1144 (Pa. Super. 2009)

Petitioner's assertion of an illegal sentence is devoid of merit and his Petition should be dismissed as untimely filed.

CONCLUSION

The Petition for Habeas Corpus Relief should be denied.

Respectfully Submitted



Albert C. Ondrey
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Bradford County District
Attorney's Office
Courthouse
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:

CERTIFICATE OF SERVICE

I, hereby certify that on the 19th day of June, 2013, I served a copy of an Answer and Memorandum, Memorandum Procedural history and Argument on the following persons and in the manner indicated below:

Service by First Class Mail Addressed
As follows:

Ronald Baker DC 5930
SCI Dallas
1000 Follies Road
Dallas, PA 18612

Untied States District Court
Middle District of Pennsylvania


Albert C. Ondrey
Albert C. Ondrey, Esquire
Counsel for Respondent
District Attorney's Office
Bradford County Courthouse
301 Main St., Towanda, PA 18848

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AFFIDAVIT

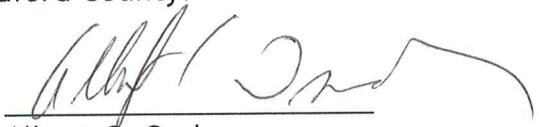
I, Albert C. Ondrey, do hereby swear and affirm as follows:

1. The Bradford County District Attorney's file from this 1996 Prosecution cannot be located after reasonable efforts. Many older files which were beyond all appeals, P.C.R.A.'s, etc were destroyed due to space constraints by acting District Attorneys.
2. The documents attached were printed from Microfiche files maintained by the Bradford County Prothonotary's Office which was out of service at the time of the original due date.
3. Counsel reviewed the Microfiche on June 13, 2013. The only proceeding transcribed was the sentencing hearing of August 18, 1997 as the only issues raised on appeal were sentencing issues.
4. The original recording of the plea proceeding may exist but counsel is advised that it may take an additional 30 days to locate it. The original stenographer is no longer employed by Bradford County.

Sworn to and Subscribed to

Before me this 17th day of June, 2013

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|--------------------------------|-----------------|
| PROTHONOTARY & CLERK OF COURTS | SALLY F. VAUGHN |
| My Commission expires: | |
| 1st Monday of January 2016 | |


Albert C. Ondrey
First Assistant
District Attorney

DOCUMENTS

1. Docket Transcript CP-08-CR-0000716-1996
2. Criminal Complaint
3. Order re: Guilty Plea dated June 30, 1997
4. Order of sentence dated August 18, 1997
5. Order re: Notice of Appeal dated September 18, 1997
6. Concise statement of Matters complained of on Appeal with attached Brief.
7. Transcript of sentencing Proceeding August 18, 1997
8. Order of Superior Court of Pennsylvania affirming Judgment of sentence dated March 25, 1998